

REC'D TN
BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:

SHOW CAUSE PROCEEDING AGAINST
GASCO DISTRIBUTION SYSTEMS, INC.

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Docket Nos.: 97-00160
& 97-00293

RESPONSE OF AUTHORITY STAFF
TO GASCO'S LETTER OF FEBRUARY 26, 2001

Background

In its *Order Affirming the October 1, 1998, Initial Order of Hearing Officer* entered on November 5, 1998, the Tennessee Regulatory Authority ("Authority") unanimously found that Gasco Distribution Systems, Inc. ("Gasco" or "company") "engaged in a pattern and practice of failing to comply with TRA Rule 1220-4-1-.10." That Order essentially placed Gasco on probation and specifically required the company to make timely filings of all reports through July 1, 2001. Gasco was found to be liable for fines in the amount of \$8,850.00 and \$4,250.00 (a total of \$13,100.00) for the late filing of the March 1997 and June 1997 reports, respectively. Gasco was ordered to pay \$6,550.00 of the fine over the next three years, with the balance of \$6,550.00 to be absolved, provided that Gasco complied with the above "reporting rule" and Order during its probationary period. Failure to comply would result in the remaining fines immediately due and payable to the Authority.

By filing four reports late during the probationary period,¹ the Company did not comply with either Rule 1220-4-1-.10 or the Order. The four quarterly reports were filed from 11-49 days late, for a combined total of 108 days late. Three of the five payments of the fines that were not held in abeyance were received late by the Authority as well.

It is clear to the Authority Staff that Gasco has continued to violate Rule 1220-4-1-.10, as well as having abused the trust of the Directors who allowed for the potential forgiveness of the previously imposed fines. Furthermore, the company has made a very poor attempt at complying with the Authority's Orders. Gasco has simply and inexplicably not complied with the requirements resulting from the Show Cause Proceeding in Docket No. 97-00293, and therefore is immediately liable for the remaining \$6,550.00.

Gasco's Proposal

At the February 21, 2001 Authority Conference, in lieu of immediately paying the remaining fines, Gasco made a counter proposal. The company suggested that instead of paying such fines to the Authority, it could use some of those funds to assist its customers that have suffered a hardship due to the unusually high natural gas costs sustained during the winter.

While this is a "sound good/feel good" proposition, Gasco's proposal lacks merit for several reasons, but potential issues of discrimination are fatal to it. First, the Company would benefit by being allowed to in essence "write off" the revenue it suspects it will lose anyway from customers who are unable to pay for their gas service. This is hardly a penalty, and it is certainly not fair to other customers who are paying their charges. Furthermore, Gasco will benefit from the positive public relations resulting from its "efforts on behalf of hardship

¹ See attached Exhibit 1, a schedule entitled "GASCO Compliance" (02/20/2001), which was provided to counsel of record by the Authority's Division of Energy and Water. This schedule tracks Gasco's filing performance over the probationary period, and was not disputed by Gasco at the February 21, 2001 Authority Conference.

customers.” The Authority Staff believes this would undercut the message that the Directors were trying to send to the company when they originally imposed the probation and fines in their Order.

Finally, the Authority Staff cannot fathom a plan that would not be successfully challenged as “unjust discrimination” under Tenn. Code Ann. § 65-4-122. Gasco’s letter states that the Authority

has previously approved a similar settlement for Gasco . . . in lieu of a fine, [Gasco] made a \$6,250 “contribution in aid of construction.” That meant, in essence, that the company irrevocably donated to customers that portion of the company’s plant-in-service.

Gasco’s current proposal is not “similar” to the above settlement, which clearly benefited the entire system, and therefore benefited **all the customers**, not just a select few. While it is unfortunate that this past winter’s high gas bills have severely impacted on a portion of Gasco’s customers, who is going to make the distinction of which customers qualify for assistance and which customers do not qualify? The Authority Staff invites Gasco to answer that question and to cite legal authority to justify any such answer.²

Position of the Authority Staff

Because Gasco did not file four of its reports on time during the probationary period, it is now liable for additional, “new” fines to be levied by the Authority. Pursuant to Tenn. Code Ann. § 65-4-120, a utility may be fined up \$50.00 per day of noncompliance with an Authority Rule or Order. The violations of the reporting rule as set out in Exhibit 1 expose Gasco to an additional \$5,400 in fines (108 days late x \$50.00), which arguably could be **doubled** due to the

² TRA Rule 1220-1-2-.06(3) states: “No reply to a response shall be filed except upon leave given or upon the order of the Authority or Hearing Officer.” The Authority Staff waives any objection to a reply to this *Response* notwithstanding this rule, and encourages counsel for Gasco to specifically address the discrimination issues in Gasco’s proposal. To allow Gasco sufficient time (seven days) for a full and thorough reply, the Authority Staff respectfully request that this matter not be scheduled prior to the March 20, 2001 Authority Conference.

acknowledged violation of the November 5, 1998 Order to "cease and desist from its pattern and practice of non-compliance with TRA Rule 1220-4-1-.10."

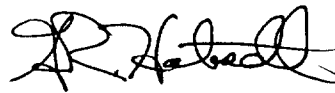
Therefore, it is the position of the Authority Staff that Gasco immediately pay to the Authority the remaining fines, \$6,550.00, imposed in Docket No. 97-00293. Further, the Authority should consider the imposition of additional fines up to \$5,400 for the late filing of four reports during the probationary period, and institute all necessary proceedings accordingly.

Relative to these four recent violations, the Authority Staff will propose an alternative sanction. The Authority could extend the probationary period for an additional three (3) years and defer the \$5,400 during this period. If Gasco fully complies with Rule 1220-4-1-.10 until July 1, 2004, then such penalties could be absolved. However, at the first indication of noncompliance by the company, this matter should be brought before the Directors with all deferred fines becoming immediately due, together with all other sanctions then deemed appropriate.

Respectfully submitted,



Butch Phillips
Investigator for Division of Energy & Water



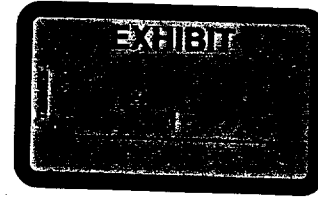
Gary R. Hotvedt
Counsel for Authority Staff

GASCO Compliance

97-00160 / 97-00293

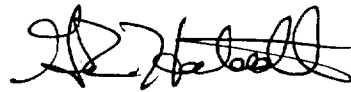
Dockets Consolidated

Quarterly Report	Date Due	Date Received	Comments	Fines	Date Due	Date Received
09/30/1998	11/30/1998	11/30/1998 by FAX 12/08/1998 Original by certified mail	On time.	1,000.00	01/01/1999	01/06/1999
12/31/1998	03/01/1999	03/12/1999 by FAX 03/15/1998 Original by overnight FedEx Gordon B. had wisdom teeth extraction. Notified by phone 3/4/99 by Fred Steele of delay.	11 days late. Accepted Company's explanation.	750.00	07/01/1999	06/30/1999
03/31/1999	05/31/1999	06/01/1999 by FAX 06/02/1999 Original by mail.	On time.	1,000.00	01/01/2000	01/06/2000
06/30/1999	08/31/1999	09/01/1999 by FAX	On time.	750.00	07/01/2000	06/22/2000
09/30/1999	11/30/1999	11/30/1999 by FAX 12/02/1999 Original by mail.	On time.	2,425.00	01/01/2001	01/04/2001
12/31/1999	02/28/2000	03/01/2000 by FAX 03/03/2000 Original by mail.	On time.	625.00	07/01/2001	
03/31/2000	05/31/2000	06/22/2000 by FAX - Phone call from Gordon. He thought it was mailed & discovered it wasn't. 06/26/2000 Original by mail.	22 days late. Accepted Company's explanation, since Gordon called when discovered.			
06/30/2000	08/31/2000	09/26/2000 by FAX 10/09/2000 Original by mail.	26 days late.			
09/30/2000	11/30/2000	01/18/2001 by FAX after Staff's phone call on approx. 1/12/01. 01/23/2001 Original by mail. Sent letter giving his explanation for oversight.	49 days late. Staff called to check on delay after check for \$2,425 rec'd. Gordon said task was delegated since he was so busy. And lady that was delegated to left in Dec. He checked & found no evidence of report being filed.			
12/31/2000	02/28/2001					



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded by hand-delivery or by facsimile to **Henry Walker, Esq.**, Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Nashville, TN 37219; and to **Cynthia E. Kinser, Deputy Attorney General**, 425 Fifth Avenue North, Second Floor, Nashville, TN 37243-0491 on this 2nd day of March, 2001.



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